



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of February, 1998

SERVED: February 13, 1998

**1998 U.S.-JAPAN INTERIM FREQUENCY
ALLOCATION PROCEEDING**

Docket OST-98-3418

**1998 U.S.-JAPAN COMBINATION SERVICE
PROCEEDING**

Docket OST-98-3419

ORDER DENYING PETITION

Summary

By this order we deny the petition of Hawaiian Airlines for reconsideration of our decision of February 9, denying its request for a delay in the procedural dates in the above-captioned proceedings.

Background/Petition

By Notice dated February 3, 1998, the Department solicited applications from U.S. carriers interested in operating new services between the United States and Japan pursuant to a January 30, 1998 U.S.-Japan Memorandum of Consultations. Because of the immediate availability for potential U.S.-flag competition in the market, and the immediate availability to other U.S. carriers of opportunities to serve Japan, the notice required that applications be filed by February 10, 1998. On February 9, 1998, Hawaiian filed a motion seeking a 20-day delay in the procedural dates for filing applications. Alternatively, Hawaiian requested that we delay for 20 days the date for filing applications for the second available designation that becomes available at a later date. By Notice dated February 9 and served February 10, the Department denied Hawaiian's request.

On February 10, 1998, Hawaiian petitioned the Secretary of Transportation for reconsideration of the Department's denial. Hawaiian argues that the procedural dates established by the Department unfairly favor those carriers that have the staff or personnel to follow not only the bilateral negotiations with Japan, but also who have the staff to dedicate to the planning and coordination of routes that may or may not be available. As a result, Hawaiian argues that small carriers such as itself are at a distinct disadvantage, and need a reasonable opportunity to apply and realistically compete with larger carriers, particularly where valuable and scarce bilateral rights become available. Hawaiian maintains that its request for a 20-day delay is not unreasonable. At a minimum, Hawaiian argues that the Department should grant its alternative request for a 20-day delay with respect to applications for the second new designation.

Delta Air Lines filed an answer opposing Hawaiian's petition, arguing that the public interest compels the expedited consideration of applications by non-incumbent carriers to use the new U.S.-Japan route opportunities. Delta takes no position on Hawaiian's alternative request to defer consideration of selection of the second new designation.

Decision

We have decided to deny Hawaiian's petition for reconsideration. As we stated in both our Notice soliciting applications and our Notice denying Hawaiian's motion for a delay in the procedural dates, new route rights under the January 30 MOC are available immediately for MOU carriers, and "incumbent" U.S. and Japanese carriers can also commence new services immediately without the need for carrier selection procedures. In these circumstances, we concluded that the public interest required the use of expedited procedures to ensure that other U.S. carriers also could implement new services in the market as quickly as possible. Hawaiian has presented no arguments that persuade us otherwise.

We also disagree with Hawaiian regarding a delay with respect to selection for the second new designation. The MOC enables the Department to allocate frequencies among the existing "MOU" carriers as well as to select two additional carriers to serve the U.S.-Japan market. The existing MOU carriers and one new entrant carrier can begin service immediately; the other new entrant can begin service at a later date. The total number of frequencies provided under the MOC, however, encompasses services to be provided by the second new entrant, as well as the three existing "MOU" carriers and the first new entrant airline. Given this common frequency pool, all the applications, including those for the second new entrant, will present issues that are interrelated, particularly as concerns our need to consider the optimum competitive market structure for the newly available U.S.-Japan services. Therefore, taking into account our need properly to assess the competitive issues involved, including the number of frequencies that should be reserved for the second new entrant, it is critical that all applications be filed contemporaneously and in accordance with our expedited procedures.¹

¹ Hawaiian requested that reconsideration be conducted by the Secretary. We note, however, that Hawaiian seeks reconsideration of the filing date for applications for authority to serve the markets at issue, not the dates on which the Department will be requiring detailed information from the carriers with respect to their proposals. Those dates have not yet been established. We also note that, notwithstanding its petition, Hawaiian filed such an application on the established due date. In these circumstances, we believe that the issues raised here are within

ACCORDINGLY,

1. We deny the petition of Hawaiian Airlines, Inc. for reconsideration of the Department's February 9, 1998 Notice, denying Hawaiian's request to delay the procedural dates in the captioned proceedings; and
2. We will serve this order on Hawaiian Airlines, Inc., Delta Air Lines, Inc., American Airlines, Inc., Continental Airlines, Inc., Continental Micronesia, Inc., Trans World Airlines, Inc., US Airways, Inc., the Ambassador of Japan in Washington, D.C., the U.S. Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>.*